

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

AGA MEDICAL CORP.,

Plaintiff,

v.

W. L. GORE & ASSOCIATES, INC.,

Defendant.

Civil Action No. 0:10-cv-03734 (JNE/JSM)

**DECLARATION OF MATTHEW K. BLACKBURN IN SUPPORT OF  
W.L. GORE & ASSOCIATES, INC.'S OPPOSITION TO PLAINTIFF AGA  
MEDICAL CORPORATION'S MOTION FOR LEAVE TO FILE AMENDED  
COMPLAINT**

1. I, Matthew K. Blackburn, am a partner at the law firm of Locke Lord LLP and I represent Defendant W.L. Gore & Associates, Inc. ("Gore") in this action. I submit this Declaration in support of Gore's opposition to AGA's motion for leave to file amended complaint.

2. Attached as Exhibit A is a true and correct copy of Defendant Gore's First Set of Requests For Production of Documents and Things to Plaintiff AGA, dated November 18, 2010.

3. Attached as Exhibit B is a true and correct copy of Defendant Gore's First Set of Interrogatories to Plaintiff AGA, dated November 18, 2010.

4. Attached as Exhibit C is a true and correct copy of a redacted version of Defendant Gore's Second Set Of Requests For Production Of Documents And Things To Plaintiff AGA Medical (Nos. 82 To 103), dated September 19, 2011.

5. Attached as Exhibit D is a true and correct copy of an email from Steven M. Purdy, counsel for Gore, to counsel for AGA, dated December 22, 2011, which attaches a subpoena on St. Jude Medical, Inc., which was served on January 3, 2012.

6. Attached as Exhibit E is a true and correct copy of Defendants AGA Medical Corp.'s and AGA Medical Holdings, Inc.'s Answering Brief in Opposition to Plaintiff W.L. Gore & Associates, Inc.'s Motion for Jurisdictional Discovery and to Amend Briefing Scheduling, dated August 11, 2011, Civil Action No. 12-00827 [Doc. 13].

7. On May 24, 2012, one of St. Jude's in-house counsel, who was handling a response to a third-party subpoena from Gore in this case, wrote to one of Gore's counsel (Zach Silbersher) indicating that "AGA will be amending the complaint in this case in the near future to add some subsidiaries of St. Jude Medical, Inc. which have been involved in selling the pertinent AGA products since January 1, 2012."

8. On May 29, 2012, AGA's counsel (Tara Norgard) sent a letter to me and to Andrea Wayda, which informed Gore that two St. Jude entities were involved in the sale of AGA's products, and that AGA wished to add those two St. Jude entities to this action. AGA did not provide Gore with a draft amended complaint, but instead indicated that: "We will be sending you a draft Amended Complaint in the next several days in an effort to accomplish the amended filing by stipulation." The underlying license agreements to the St. Jude entities were not mentioned.

9. On June 7, Gore's counsel (Zachary D. Silbersher) sent a letter to AGA's counsel following up on Gore's request for materials to consider AGA's potential motion

for leave to amend. Mr. Silbersher reiterated that “Gore needs at least one week to review the materials to effectively assess whether Gore will object to AGA’s motion to amend.”

10. On June 8, 2012, Ms. Norgard responded by letter and indicated that she would not send the proposed amended Complaint to Gore, because AGA had not provided “final approval” to do so.

11. On June 29, 2012, AGA finally sent a draft amended complaint to Gore, which for the first time identified the two new St. Jude entities as SJM CVD and SJM S.C. AGA’s proposed amended complaint deleted the allegation that AGA medical owned “the entire right, title, and interest in and to” the ‘738 patent, and contained no allegation whatsoever that either SJM CVD or SJM S.C. had any rights in the ‘738 patent.

12. On July 9, 2012, after the July 4th holiday, I spoke with Ms. Norgard by telephone. During that call, I reiterated that Gore did not stipulate to the proposed amended complaint, and could not do so without more information. During that conversation, Ms. Norgard represented that SJM CVD and SJM S.C. have been involved in sales of Amplatzer Septal Occluder, Amplatzer Multi-Fenestrated Occluder (Cribiform) and Amplatzer PFO Occluder in the United States as of January 2012, and that those parties had no involvement in sales of the Amplatzer products listed above prior to that time. Ms. Norgard also represented that AGA Medical had licensed the ‘738 patent to the two newly-named St. Jude affiliates, and stated that the license had not been produced to Gore. In light of AGA’s draft amended complaint produced on June 29,

2012, we reiterated that Gore needed production of that license before we could answer AGA's request for a stipulation to the draft amended complaint. This conversation was memorialized in my July 9 letter to Ms. Norgard.

13. On July 17, 2012, I had a follow-up call with Ms. Norgard. She indicated that production of the license to the new St. Jude entities would be delayed by at least another month. Counsel for AGA's excuse was that the relevant people were out of the country until the middle of August. Gore reiterated that it would not stipulate to an amendment, and required the license to evaluate the request.

14. On August 21, 2012 (at the close of business), Ms. Norgard sent an email attaching copies of two license agreements being produced by St. Jude Medical. AGA (the alleged patent owner) has not yet produced copies of these agreements or any paper related to them.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of September, 2012.

/s/ Matthew K. Blackburn  
Matthew K. Blackburn (CA #261959)  
LOCKE LORD LLP  
44 Montgomery Street  
Suite 2400  
San Francisco, CA 94104  
Telephone: (415) 318-8810  
Facsimile: (415) 676-5816  
E-mail: mblackburn@lockelord.com